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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 IN RE: UBER TECHNOLOGIES, INC.,
16 PASSENGER SEXUAL ASSAULT
LITIGATION

17 This Document Relates to:

18 ALL ACTIONS
19

Case No. 3:23-md-03084-CRB

**DEFENDANT UBER TECHNOLOGIES,
INC., RASIER, LLC, AND RASIER-CA,
LLC'S BRIEF IN SUPPORT OF
SEPTEMBER 5 AND 8, 2025
CLAWBACKS PURSUANT TO SPECIAL
MASTER ORDER NO. 4, § III**

Pursuant to Special Master Order No. 4, § III (Dkt. 2933), Defendants submit this brief in support of Uber’s privilege assertions for three documents Uber clawed back on September 5 and 8, 2025, pursuant to Pretrial Order No. 14, which Plaintiffs have now challenged. Defendants respectfully request that the Special Master uphold the privilege claims as to each of the challenged documents.

Defendants incorporate by reference the legal standard and arguments set forth in Defendants’ prior briefing (Dkts. 2433, 2461, 2528, 2544, and 2580). As further support for their privilege claims, Defendants provide the arguments and factual support listed below, along with the September 25, 2025, declaration of Uber’s Senior Legal Director, Global Labor and Employment, Dalene Bramer (Ex. A) and September 25, 2025, declaration of Uber’s Director, Head of Marketing Legal & Commercial Transactions, Jessica Smith (Ex. B). The applicable legal standard and arguments outlined below and in prior briefs, the declarations from in-house counsel, and the factual material previously provided to the Special Master,¹ when reviewed in conjunction with the challenged documents and the associated metadata fields, establish that the documents at issue are privileged.

I. Uber Has Appropriately Exercised Its Right to Claw Back Privileged Documents.

The three documents at issue here should remain protected as privileged, and subject to other applicable protections, notwithstanding the documents’ prior production. Uber has appropriately exercised its clawback rights under Stipulated Pretrial Order No. 14: Federal Rule of Evidence 502(d) and Privilege Materials (“PTO 14”) (Dkt. 396). PTO 14 provides that “the production of any privileged or otherwise protected or exempted information in this case *shall not be deemed a waiver or impairment of any claim of privilege or protection in this case* or in any other federal or state proceeding, including, but not limited to, the attorney-client privilege, the protection afforded to work product materials, statutory privileges and protections, or the subject matter thereof, as to the produced document and any related material.” PTO 14, Sec. B.2 (emphasis added). Uber timely notified

¹ As requested by the Special Master, Uber has provided: (1) a glossary of terms commonly used in disputed documents, (2) a list of names and titles of relevant Uber inside and outside counsel, and (3) a digest of third-parties present in its privilege log. Defense counsel will also be available for any questions the Special Master may have during the review process.

1 Plaintiffs of its intention to clawback these documents. Uber has also timely provided a privilege log
2 and replacement images for all documents subject to its clawback request.

3 **II. The Special Master Should Uphold Uber’s Claims of Privilege and Work Product**
4 **Protection.**

5 The factual record and additional context provided herein provides additional support for
6 Defendants’ PTO 14 clawbacks. The Special Master should reject Plaintiffs’ challenges and uphold
7 the privilege and work product claims for each of the three documents at issue.

8 **A. JCCP_MDL_PRIVLOG110285**

9 JCCP_MDL_PRIVLOG110285 is a presentation deck outlining an initiative regarding the
10 company’s independent contractor model for independent drivers who use the Uber platform. The
11 presentation deck is stamped “Attorney Client Privileged” and “Created at Request of Counsel” on the
12 title slide at the beginning of the deck, and on several slides throughout the presentation. As Ms.
13 Bramer explains in her declaration, she was the designated leader of the initiative discussed in the
14 document. The project included a cross-functional team of product, operations, and legal individuals
15 that were led by her. The purpose of the presentation was to inform the business about the product
16 changes that she recommended to bolster driver independence for purposes of strengthening the
17 company’s position in litigation and to avoid future litigation. The purpose of the presentation was
18 also to advise the company about the critical legal implications that an employment model for drivers
19 could have on Uber.

20 Plaintiffs challenge this document on the ground that “it is not privileged in its entirety,”
21 because Plaintiffs claim the primary purpose of this document is business operations/corporate policy.
22 Plaintiffs provide no basis, however, for challenging Uber’s claim for work product protection. Ms.
23 Bramer’s declaration demonstrates that this document is properly withheld as protected work product.
24 Indeed, Ms. Bramer explained that she and other attorneys directed the creation of the slides, and
25 provided direct input, in anticipation of litigation and to mitigate legal risks related to misclassification
26 lawsuits. The document as a whole includes Ms. Bramer’s and other attorneys’ mental impressions
27 and opinions about the independent contractor model and their recommendations and advice as legal

1 counsel to the company. *See* Ex. A at para. 3. The document is and should remain protected as work
2 product.

3 Moreover, Plaintiffs are wrong to suggest that the document does not reflect legal advice. Ms.
4 Bramer’s declaration confirms that the document reflects the legal team’s view of legal risks and
5 strategies for minimizing those risks. The document itself contains explicit references to legal
6 challenges that were anticipated. The fact that there is factual or policy content within the document
7 does not diminish its privileged nature, because that content was integral to the provision of legal
8 advice contained within the document.

9 **B. JCCP_MDL_PRIVLOG110292**

10 As Jessica Smith, who is an attorney and the Director, Head of Marketing Legal & Commercial
11 Transactions at Uber, explains in her declaration, JCCP_MDL_PRIVLOG110292 is a slide
12 presentation reflecting a confidential, legal training course, titled “Uber Marketing Legal Training.”
13 The author identified in the metadata is Alex Riback, Manager, Legal - Compliance. Although not an
14 attorney, Mr. Riback is part of the Compliance Legal team and works closely with in-house counsel.

15 As Ms. Smith explains, this document was created at the direction of, and contains advice,
16 opinions, and analysis performed by, attorneys in Uber’s Marketing Legal team and Legal Ethics and
17 Compliance team. Specifically, as the metadata of the presentation confirms, Uber in-house attorneys
18 Scott Schools, then-Chief Ethics and Compliance Officer, and Deanna Slocum, then- Senior Director,
19 Ethics and Compliance Program, are collaborators on the document and provided legal advice
20 reflected in the legal training, such as the federal and state laws applicable to Uber’s marketing
21 practices. One of the key responsibilities of Uber attorneys in the Compliance team is training various
22 departments on the laws and regulations that apply to the department, as well as advising them
23 concerning the legal liabilities and risks associated with non-compliance. This training was designed
24 to provide legal guidance to Uber’s marketing department.

25 Tellingly, Plaintiffs do not, and cannot, contest the fact that the document was created at the
26 direction of counsel in anticipation of litigation and reflects legal advice. Instead, Plaintiffs claim that
27 Defendants waived privilege by not objecting or clawing this document back during a June 11, 2025,
28

1 deposition of Uber company witness, Elizabeth Ross. While the document was marked as an exhibit
2 for the record, there were no questions asked about the challenged document. Rather, the questioner
3 indicated that she intended to use a different document and instructed the witness to “just set that one
4 [JCCP_MDL_PRIVLOG110292] aside for right now.” The questioner never returned to ask questions
5 about the challenged document, so there was no occasion for the parties to appreciate the privileged
6 nature of the document. Once Defendants and counsel identified the privileged nature of the document
7 after it was identified in JCCP Plaintiffs’ trial exhibit list, the document was promptly clawed back.

8 **C. JCCP_MDL_PRIVLOG110290**

9 JCCP_MDL_PRIVLOG110290 is a document called “Safety Ops Legal Guidance Doc,”
10 authored by in-house counsel Scott Binnings. Five of the six document collaborators are attorneys. It
11 contains explicit legal advice from Mr. Binnings and other legal contacts identified in the document
12 regarding the company’s standards for using recording devices. Not surprisingly, Plaintiffs do not
13 challenge the merits of Uber’s privilege and work product assertions. Rather, they challenge this
14 clawback based solely on their view that Defendants waived privilege and work product protection by
15 not clawing the document back within 21 days of the document having been identified on lists of
16 materials considered by two expert witnesses.

17 This argument is without merit. This document appears to have first been identified as one of
18 approximately 300 documents considered by the JCCP Plaintiffs’ expert, John Feldis, in a May 26,
19 2025, report. Defendants’ expert, Dr. Daniel Cumming, reviewed the same set of materials and
20 likewise identified it on his list of materials considered. None of these reports included a substantive
21 discussion of JCCP_MDL_PRIVLOG110290; it was merely identified by Bates number in broad lists
22 of materials considered. The appearance of this document, by Bates number, on an expert’s materials
23 considered list is not evidence that Defendants had discovered that a privileged and protected
24 document had been produced. Of course, the experts are not tasked with identifying or evaluating
25 claims of legal privilege. When Defendants and counsel became aware this privileged and protected
26 material had been produced, Defendants promptly clawed it back. Plaintiffs’ procedural argument to
27 the contrary should be rejected.

1 **III. The Court Should Reject Plaintiffs’ Untimely Challenge to JCCP_MDL_PRIVLOG067370.**

2 The Court should reject Plaintiffs’ challenge because it is untimely, as Plaintiffs have
 3 challenged the merits of Uber’s privilege assertion for the first time approximately five months after
 4 Defendants clawed the document back. Defendants clawed this document back by letter dated April
 5 15, 2025. A replacement image was produced on April 18, 2025. Under Pretrial Order No. 14,
 6 Plaintiffs were required to assert any challenge to the clawback within seven business days. They did
 7 not do so. Plaintiffs took the position that their challenge to this document was submitted to the Special
 8 Master as of April 29, 2025. *See* “2025 08 26 PTF List of disputed and submitted documents,” Row
 9 129. However, their challenge was based solely on their position that the document was subject to
 10 Judge Cisneros’s April 24, 2025 waiver order [Dkt. 2855]. Plaintiffs did not assert any challenge to
 11 the merits of the privilege assertion until September 11, 2025, *after* the Special Master resolved the
 12 pending challenge. Nothing in pretrial orders or the Special Master’s orders allow Plaintiffs multiple
 13 opportunities to challenge a document. While Plaintiffs claim that their August 26, 2025, submission
 14 reserved a right to challenge Defendants’ clawbacks on substantive grounds, the time to do so had
 15 long passed. The Court should reject Plaintiffs’ untimely challenge. However, if the Court allows
 16 Plaintiffs to assert a merits challenge, Defendants respectfully request an opportunity to respond and
 17 support the merits of their privilege claim.

18
 19 DATED: September 25, 2025

Respectfully submitted,

20
 21 **SHOOK HARDY & BACON L.L.P.**

22 By: /s/ Maria Salcedo
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